airway dysfunction due to trichloroethane exposure. The claimant testified that he was exposed on February 28, 1996, but continued to work for several weeks. He then went on an extended overseas vacation, and did not cease working until April 12, 1996. This hiatus clearly supports the opinions of Drs. Guzzardi and Schein concluding that the claimant's exposure to the chemical was a minor irritant, lasting a few days. I further credit the opinions of Dr. Guzzardi as he is a toxicologist and reviewed the available literature on trichloroethane exposure and its consequences prior to offering an opinion.

16. I accept as credible the testimony of the claimant regarding his exposure and complaints. I further find as fact that the claimant was exposed to trichloroethane during his regular work duties. However, no injury or disability resulted from the exposure.
17. The claimant's counsel offered a bill of costs as follows:

Dr. Norman Frey – records	$25.00
Sargent's Court Reporting	121.55
Dr. Nellhaus – report	200.00
Sargent's Court Reporting	56.80
TOTAL	403.35

18. The claimant has a contingent fee agreement with his counsel in the amount of 20%, which is approved as reasonable.
19. A statement of wages was not submitted by the employer.
20. The employer's contest of this matter was reasonable.

CONCLUSIONS OF LAW

1. The claimant, Steven Smith, has failed to meet the burden of proof required to demonstrate that his claim petition for the closed period of April 12, 1996 to September 24, 1996 should be granted.

2. Unequivocal medical testimony is required to establish that the claimant incurred a disabling injury as a result of exposure to trichloroethane. Credible medical evidence combined with the testimony of the claimant establishes no causal connection of a disabling injury related to the claimant's employment.

ORDER

AND NOW, this 15th day of October, 1997, the claimant's claim petition is dismissed. No items in the bill of costs are payable. No attorney's fees are payable.

/s/ Kathleen Vallely, Workers' Compensation Judge

Commonwealth of Pennsylvania
Department of Labor and Industry
Bureau of Workers' Compensation

Steven Smith, claimant
v.
Consolidated Freightways

HEARINGS: 12/10/97; record made
2/11/98; record made
8/26/98; record made

CLAIMANT'S WITNESSES & EXHIBITS:

1. Medical expenses
2. Hazardous substance fact sheets
3. MSDS on wood floor adhesive
4. Hazardous materials incident report
5. Grievance materials

EMPLOYER'S WITNESSES & EXHIBITS:
None

BUREAU EXHIBITS:
10/16/97 WCOD Decision and Order

FINDINGS OF FACT

1. Claimant, Steven Smith, through counsel, filed a petition for medical review. The claimant avers in his petition that by Decision circulated on October 16, 1997, I had found that claimant was exposed to a toxic substance. However, while there is a finding that no "disability" resulted from the exposure, there is no finding with regard to the medical bills claimant incurred as a result of this exposure. Claimant seeks a review of the Decision on the issue of payment of medical treatment.
2. Defendant employer, Consolidated Freightways, filed a timely responsive answer denying the material

allegations contained in claimant's petition.

3. In a Decision circulated on October 16, 1997, I found in finding of fact number 16 that the claimant was exposed to trichloroethane during his regular work duties. However, I found that no injury or disability resulted from that exposure. I further found that claimant had received no medical treatment between February 28, 1996, the date of his exposure, and August 12, 1996 for any symptoms he believed were associated with the work-related chemical exposure. I further found that the claimant's exposure to the chemical was transient and that there were no known cases of exposure to trichloroethane causing pulmonary problems. I also credited the opinion of Dr. Guzzardi that the claimant's complaints were caused to reflux due to hiatal hernia.
4. Claimant has not offered any evidence to support a finding that any treatment he received was related to his exposure to the chemical trichloroethane.
5. Claimant has not established that he has undergone any medical treatment that it causally related to the chemical exposure of February 28, 1996.

CONCLUSIONS OF LAW

1. Claimant has not met his burden of proof and established that he is entitled to reimbursement of any medical expenses.

ORDER

AND NOW, this 30th day of November, 1998, claimant's petition is denied.

/s/Kathleen Vallely, Workers' Compensation Judge

Commonwealth of Pennsylvania
Workers' Compensation Appeal Board

Steven Smith, claimant
v. **Nos. A97-4661/A98-4922**
Consolidated Freightways,
Defendant

OPINION

McDermott, Chairman:

Claimant appeals to the Workers' Compensation Appeal Board (Board) from the Decisions and Orders of Workers' Compensation Judge (WCJ) Kathleen Vallely, circulated on October 16, 1997, and November 30, 1998, denying Claimant's claim Petition and Review Medical Petition. We affirm for the reasons stated below.

On May 15, 1996, Steven Smith (Claimant) filed a Claim Petition alleging that on February 28, 1996, he was exposed to the chemical "trichloroethane" in the course and scope of his employment with Consolidated Freightways (Defendant). Claimant requested total disability benefits from April 12, 1996, for an indefinite period but later amended to request benefits from April 12, 1996, through September 24, 1996.

In a Decision and Order circulated on October 16, 1997, the WCJ denied Claimant's Claim Petition, concluding that he failed to meet his burden of proving a disabling injury as a result of exposure to a toxin and failed to establish a causal connection between a disabling injury and his work. Claimant's Appeal followed.

On October 31, 1997, Claimant filed a Review Medical Petition seeking to review the WCJ's October 16, 1997, Decision and Order. Claimant alleged that the WCJ failed to render a Finding as to whether Claimant was entitled to payment of medical bills incurred as a result of exposure to toxic substances. Defendant filed an Answer denying all material allegations and asserting that the WCJ's Decision

was being appealed and the Review Petition was not appropriately before the WCJ.

In a Decision and Order circulated on November 30, 1998, the WCJ denied Claimant's Review Petition concluding that he failed to sustain his burden of proving an entitlement to a reimbursement of medical expenses. Claimant's Appeal followed. We consolidate Claimant's Appeals for the sake of judicial economy.

The Board's scope of review is limited to determining whether an error of law has been committed and whether the necessary Findings of Fact are supported by substantial competent evidence. Universal Cyclops Steel Corporation v. WCAB and Krawczynski, 305 A.2d 757 (Pa. Cmwlth. 1973). Substantial competent evidence is such evidence that a reasonable mind would accept as adequate to support a Finding of Fact. York Terrace/Beverly Enterprises v. WCAB (Lucas), 591 A.2d 762 (Pa. Cmwlth. 1991).

Claimant argues that the WCJ erred in denying his Claim Petition. Specifically, Claimant asserts that the WCJ rendered Findings that he was exposed to a toxin and did not suffer any injury or disability, but failed to address medical treatments related to exposure.

The burden of proof in an original claim petition is on the claimant to prove a disability resulting from a work injury and that the injury continued to cause a disability throughout the pendency of the claim petition. Inglis House v. WCAB (Reedy), 535 Pa. 135, 634 A.2d 592 (1993). If the cause of the condition is not obvious, unequivocal medical testimony is required. Cardyn v. WCAB (Heppenstall), 517 Pa. 98, 534 A.2d 1389 (1987).

Claimant testified that he was a driver/salesman for Defendant. On February 28, 1996, Claimant's load contained a hazardous material. After Claimant made two deliveries, he noticed that one of the hazardous material containers was leaking. The odor emanating from the leaking container caused his throat to burn and made him nauseous and light headed. He immediately left his trailer and contacted Frank Bazacheck, a manager, who told him to secure the material

and bring it back to the terminal. Claimant returned to the terminal and continued to work the remainder of the day without difficulty. Claimant did not contact a doctor or miss work for reasons related to this incident but continued to cough and feel ill. On April 12, 1996, Claimant went to the company doctor and has not returned to work since that date. Claimant elected to retire as of August, 1996. Claimant testified that he cannot return to work because he continues to suffer from shortness of breath. (N.T., 7/25/96, Pgs. 7, 17-27, 41-42; N.T., 11/13/96, Pgs. 8-9).

Claimant and Defendant presented the May 28, 1996, medical report from Kurt Nellhaus, M.D., F.C.C.P., which contains a diagnosis of possibly airway injury secondary to trichloroethane exposure and possible reactive airway disease related to the lung exposure. (Claimant's Exhibit 3; Defendant's Exhibit B).

Claimant also presented the September 24, 1996, medical report of Kurt Nellhaus, M.D., which reiterates the diagnosis of reactive airway dysfunction possibly triggered by trichloroethane exposure. The doctor opined that Claimant's exposure did cause Claimant a period of disability that was not permanent. (Claimant's Exhibit 6).

Claimant also submitted the April 4, 1996, OSHA report, which cited Defendant for failure to properly maintain chemical data sheets and labeling methods. (Claimant's Exhibit 5).

In opposition, Defendant presented the October 26, 1996, medical report of Lawrence Guzzardi, M.D., M.B.A. Dr. Guzzardi opined that Claimant's symptoms were not related to his transient exposure to trichloroethane. He noted that Claimant did not exhibit objective evidence of a pulmonary injury either at the time of exposure or at the time of his pulmonary evaluation. The doctor opined that Claimant's symptoms were the result of esophageal reflux from a non-work-related hernia. (Defendant's Exhibit A).

The WCJ found Claimant's testimony regarding his exposure and complaints credible, but rejected his testimony as it referred to any injury or period of disability. The WCJ

further found Dr. Guzzardi's report credible and rejected the reports of Dr. Nellhaus as equivocal. The WCJ, as the ultimate fact finder, has exclusive authority to determine the credibility of witnesses and to resolve conflicts in testimony. Vazquez v. WCAB (Masonite Corp.), 687 A.2d 66 (Pa. Cmwlth. 1996). Where, as here, that testimony provides substantial support for the WCJ's Finding, we may not alter that Finding on Appeal. Pennsylvania Turnpike Commission v. WCAB (Collins), 709 A.2d 460 (Pa. Cmwlth. 1998).

After a review of the record, we discern no error in the WCJ's conclusion that Claimant failed to establish a work-related injury or resulting disability. Dr. Guzzardi opined that Claimant's transient exposure to the toxin did not cause his symptoms or any period of disability. Thus, we discern no error in the WCJ's Decision to deny Claimant's Claim Petition. As the WCJ's Decision to deny Claimant's Claim Petition based upon a lack of a work injury, a subsequent disability, and a causal connection is supported by the evidence, there was no need for the WCJ to detail Claimant's medical treatments related to exposure. We discern no merit in Claimant's argument.

With respect to Claimant's Review Petition, Claimant argues that the WCJ capriciously disregarded evidence when she found that no injury or disability resulted from Claimant's exposure to trichloroethane, that Claimant did not receive medical treatment from February 28, 1996, through August 12, 1996, that Claimant's exposure was transient and there are no known cases of exposure to trichloroethane causing pulmonary problems, and that Claimant's complaints were caused by a hernia condition.

In a review medical petition, the issue is whether the medical treatment is causally related to the work injury, and not whether the medical treatment is reasonable or necessary. Mercy Douglas Corp. v. WCAB (Davis), 713 A.2d 722 (Pa. Cmwlth. 1998); Warminster Fiberglass v. WCAB (Jorge), 708 A.2d 517 (Pa. Cmwlth. 1998). The burden of proof is on the party filing the petition. Collier v. WCAB (Taylor Hospital), 719 A.2d 820 (Pa. Cmwlth. 1998). Capricious

disregard is the standard of review used when the party with the burden of proof is the only party to present evidence and that burdened party loses. Tomczak v. WCAB Pro-Aire Transport, Inc.), 667 A.2d 271 (Pa. Cmwlth. 1995). As Defendant did not present evidence, we shall apply the capricious disregard standard.

Claimant submitted copies of medical expenses and payment checks, a statement from the Commonwealth Department of Labor and Industry detailing methods of handling hazardous materials, a Material Safety Data Sheet which indicates that exposure to trichloroethane ay be harmful, an incident report, and information regarding his grievance process. (Exhibits 1-5). However, none of these documents establish a causal relationship between Claimant's exposure and his alleged work injury or symptoms. Furthermore, as we have affirmed the WCJ's Decision that Claimant did not sustain a work-related injury or resultant disability, we discern no error in the WCJ's Decision to deny Claimant's Review Petition.

With respect to the Review Petition, Claimant also argues that the WCJ did not render a reasoned Decision as required by Section 422(a) of the Act because she did not adequately state her reasons for discrediting competent evidence.

Section 422(a) of the Workers' Compensation Act[1] provides that all parties are entitled to a reasoned Decision with Findings of Fact and Conclusions of Law which clearly and concisely explain the WCJ's rationale. The WCJ must specify the evidence relied upon and state the reasons for accepting it. Uncontroverted evidence may not be rejected without a reason and must explain the rejection of such evidence. 77 P.S. Section 834; Hahnemann University Hospital v. WCAB (Wallace), 718 A.2d 391 (Pa. Cmwlth. 1998).

The WCJ analyzed Claimant's evidence and concluded that it was inadequate to meet his burden of proof.

---

[1] Act of June 2, 1915, P.L. 736, as amended, 77 P.S. Sections 1-1041.4; 2501-2626.

As we have affirmed the WCJ's Decision in this regard, the WCJ did not unreasonably reject the evidence and therefore the Decision falls within the mandates of Section 422(a). Claimant's argument is rejected.

Accordingly:

ORDER

The Appeals of Claimant are DENIED.

The Decisions and Orders of the Workers' Compensation Judge denying Claimant's Claim and Review Petitions are AFFIRMED.

BY THE BOARD: s/ Susan McDermott

Commonwealth of Pennsylvania
Department of Labor and Industry
Workers' Compensation Appeal Board

Steven Smith, claimant
v. **No: A02-1087**
Consolidated Freightways

OPINION

FRIONI, COMMISSIONER:

Before the Workers' Compensation Appeal Board is the Appeal of Steven Smith (Claimant) from the Decision and Order of Workers' Compensation Judge (WCJ) David Henry, denying Claimant's Claim Petitions based on res judicata/collateral estoppel. We affirm for the reasons stated below.

Claimant originally filed a Claim Petition on May 15, 1996, alleging that he sustained an injury during the course and scope of his employment with Consolidated Freightways (Defendant) on February 28, 1996, resulting from exposure to a harmful chemical identified as "trichloroethane." By a Decision circulated October 16, 1997, WCJ Vallely denied this Claim Petition.

Claimant then filed a Review Medical Petition seeking review of WCJ Vallely's Decision with regard to the payment for medical treatment. WCJ Vallely denied this Petition as well. Claimant appealed both of WCJ Vallely's Decisions to this Board. The Board affirmed both Decisions by an Opinion dated December 31, 1999.

On September 27, 2001, Claimant filed three new Claim Petitions, again alleging that he sustained a work-related injury caused by exposure to hazardous materials on February 28, 1996. Defendant moved for dismissal on the grounds of res judicata, collateral estoppel and statute of limitations. By a Decision and Order circulated on March 26, 2002, WCJ Henry denied Claimant's Claim Petitions, concluding that Claimant was precluded from re-litigating the same issues that were addressed in Claimant's previous

Claim Petition. Claimant's Appeal followed.

The Board's scope of review is limited to determining whether substantial, competent evidence supports the WCJ's findings of fact or whether an error of law was committed. Bethenergy Mines, Inc. v. WCAB (Skirpan), 531 Pa. 287, 612 A.2d 434 (1992). If the Board finds that the record contains evidence which a reasonable person might find sufficient to support the WCJ's findings of fact, the findings must be affirmed. Id. The WCJ has sole province over questions of credibility and may accept or reject the testimony of any witness, including a medical witness, in whole or in part. Hess Bros. v. WCAB (Gornick), 563 A.2d 236 (Pa. Cmwlth. 1989).

Claimant argues that the WCJ erred and abused his discretion in failing to consider after-discovered evidence in the form of a corrected Material Data Safety Sheet explaining the chemical make-up and hazardous classification of trichloroethane. In support of his Appeal, Claimant cites case law interpreting the Board's power to grant rehearing under Section 426 of the Workers' Compensation Act (Act), 77 P.S. Section 871.

Preliminarily, we observe that the WCJ adequately considered the after-discovered evidence submitted by Claimant. WCJ Henry stated in his findings that he reviewed the evidence as a whole but did not find the new evidence to have any weight in changing the outcome. WCJ Henry specifically stated that despite the additional material data safety sheet, he found it to be of no material consequence, since the sheet listed trichloroethane, and WCJ Vallely previously made a finding that Claimant was exposed to that chemical. In addition, WCJ Henry clearly found that the medical evidence regarding what specific chemical Claimant was exposed to was not relevant, given the fact that Claimant ultimately failed to prove a disability from chemical exposure. [Finding of Fact No. 5].

We must point out, however, this case does not include a Request for Rehearing under Section 426. Instead Claimant simply filed new Claim Petitions for the same

alleged injury that was the subject of his prior Claim Petition. Consequently, the WCJ dismissed those Petitions based on res judicata/collateral estoppel. Therefore, the proper inquiry in this Appeal is whether WCJ Henry correctly applied these doctrines in dismissing Claimant's latest Petitions.

We agree that Claimant's Petition is barred under the concept of res judicata. Res judicata applies when there is 1) identity of the thing sued upon or for; 2) identity of the cause of action; 3) identity of the persons and parties to the action; and 4) identity of the quality and capacity of the parties suing or being sued. Mason v. WCAB (Hilti Fastening Systems Corp.), 657 A.2d 1020 (Pa. Cmwlth. 1995). Whether two actions are identical depends on whether the ultimate and controlling issues have been previously decided. Hammel v. Hammel, 636 A.2d 703 (Pa. Super. 1994).

Claimant is alleging the same date of injury and the same mechanism of injury, exposure to hazardous material, in his subsequent Claim Petitions as in his first Petition. Claimant is claiming the exact same symptoms and complaints and seeking the exact same type of benefits. In all the actions on this matter the parties have been the same. Consequently, we cannot agree with Claimant's argument that res judicata does not apply. Significantly, he advances no authority, and we are aware of none, that allows the WCJ or this Board to disregard a prior adverse adjudication.

Accordingly, we:

ORDER

The Decision and Order of the Workers' Compensation Judge denying Claimant's Claim Petition is hereby AFFIRMED. The Appeal of Claimant is Denied.

BY THE BOARD:
/s/ Alfonso Frioni

IN THE COMMONWEALTH COURT OF
PENNSYLVANIA

Steven Smith,
Petitioner

v. **No. 1828 C.D. 2003**

Worker's Compensation
Appeal Board (Consolidated Freightways),
Respondent

ORDER

NOW, March 9, 2004, upon consideration of petitioner's request to report the opinion accompanying our Order in the above-captioned matter, the request is denied.

BY THE COURT

/s/ James Gardner Colins, President Judge

ORDER TO BE REVIEWED

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Steven Smith,
Petitioner

v. **No. 1828 C.D. 2003**

Worker's Compensation Appeal Board (Consolidated Freightways,
Respondent

ORDER

AND NOW, this 17th day of December, 2003, the decision of the Workers' Compensation Appeal Board is AFFIRMED.

S/ Robert Simpson, Judge

MEMORANDUM OPINION

Steven Smith (Claimant), representing himself, appeals the decision of the Workers' Compensation Appeal Board (Board) that determined his second claim petition was barred by res judicata and collateral estoppel. As Claimant's earlier identical claim petition was denied, we agree he cannot re-litigate the matter, and we affirm.

Claimant was employed by Consolidated Freightways (Employer) as a truck driver. In February 1996, he was exposed to trichloroethane. Following exposure, Claimant claimed shortness of breath, bronchitis, cough, and throat irritation.

Claimant filed a claim petition averring total disability with an onset date of April 12, 1996. Claimant and Employer presented conflicting expert reports on causation. The WCJ accepted Employer's experts over Claimant's expert, finding:

> 14. After a thorough review of the testimony of the claimant, the circumstances during and after the

trichloroethane exposure, and the medical reports offered, I find as fact that the claimant has not established through unequivocal medical evidence that he suffered a period of disability causally related to exposure to the chemical trichloroethane.

15. I specifically find that the reports of Dr. Nellhaus are equivocal. He distinctly noted a "possibility" of airway dysfunction due to trichloroethane exposure. The claimant testified that he was exposed on February 28, 1996, but continued to work for several weeks. He then went on an extended overseas vacation, and did not cease working until April 12, 1996. This hiatus clearly supports the opinions of Drs. Guzzardi and Schein concluding that the claimant's exposure to the chemical was a minor irritant, lasting a few days. I further credit the opinions of [Employer's toxicologist] as he is a toxicologist and reviewed the available literature on trichloroethane exposure and its consequences prior to offering an opinion.

16. I accept as credible the testimony of the claimant regarding his exposure and complaints. I further find as fact that the claimant was exposed to trichloroethane during his regular work duties. However, no injury or disability resulted from the exposure.

October 15, 1997 WCJ Op. at 3 (emphasis added). Claimant appealed to the Board which, finding the WCJ's decision supported by substantial evidence, affirmed.

In September 2001, Claimant filed a second claim petition again alleging that exposure to trichloroethane in February 1996 caused indefinite disability with an onset date of April 12, 1996. Employer raised the defenses of res judicata, collateral estoppel, and statute of limitations.

Claimant argued his claim was not barred because Employer defrauded him by failing to turn over a material data safety sheet (MSDS) for the chemicals to which he was exposed at work. The WCJ rejected Claimant's argument, finding that:

> Even if [Employer] had the MSDS in its possession, and failed to turn it over to the claimant, it would not have changed the outcome of the earlier proceedings. The judge already found that the claimant was exposed to that chemical, but found that there was no adverse effect as a result of that exposure. In fact, she relied upon the doctor's opinion that his symptoms were related to a non work-related condition. Therefore, there is no legitimate reason to reopen this matter.

March 15, 2002 WCJ Op. at 3; Finding of Fact (F.F.) No. 5. Agreeing Claimant's peition was barred by res judicata and collateral estoppel, the Board affirmed.

Claimant now petitions this Court for review of the Board's order arguing Employer defrauded him and the original WCJ by not providing the MSDS documents in a timely manner. Claimant asserts this document discloses information pertaining to the exact nature of the chemicals to which he was exposed, and he requests a rehearing on causation.

The doctrine of *res judicata* provides that where there is a final judgment on the merits, future litigation between the parties on the same cause of action is prohibited. Myers v. Workers Compensation Appeal Board (Univ. of Pennsylvania), 7782 A.2d 1108 (Pa. Cmwlth. 2001), appeal denied, 568 Pa. 688, 796 A.2d 319 (2002). *Res judicata* encompasses two related, yet distinct priciples: technical *res judicata*, or claim preclusion, and collateral estoppel, or issue preclusion. Henion v. Workers' Comp. Appeal Bd. (Firpo & Sons, Inc.), 776 A.2d 362, 365 (Pa. Cmwlth. 2001).

"Technical res judicata provides that when a final

judgment on the merits exists, a future suit between the parties on the same cause of action is precluded." Id. Technical res judicata applies when the following four identities are present: (1) identity of the thing sued upon or for; (2) identity of the causes of action; (3) identity of the persons or parties to the action; and (4) identity of the quality or capacity of the parties suing or being sued. Id. Res judicata applies to claims that were actally litigated as well as those matters that should have been litigated. Id. Generally, causes of action are identical when the subject matter and the ultimate issues are the same in both the old and new proceedings. Id.

The doctrine of collateral estoppel/ issue preclusion prevents the re-litigation of issues of law or fact in a subsequent action when the following factors are demonstrated:

> (1) the issue decided in the prior case is identical to the one presented in the later case;
> (2) there was a final judgment on the merits;
> (3) the party against whom the doctrine is asserted was a party or in privity with a party in the prior case and had a full and fair opportunity to litigate the issue and;
> (4) the determination in the prior proceeding was essential to the final judgment.

C.D.G., Inc. v. W.C.A.B. (McAllister), 702 A.2d 873, 875 (Pa. Cmwlth. 1997)(footnote omitted).

The four identities necessary for the application of technical res judicata/claim preclusion are present. Claimant's second claim petition was materially identical to his first. It sought benefits beginning on April 12, 1996. Also, it sought the same remedy, under the same theory, against the same parties.

Further, the four requirements of collateral estoppel/issue preclusion are met. The issues presented, and

the claim of disability beginning April 12, 1996 caused by exposure to trichloroethane, are identical. The claim petition resulted in a final judgment, and Claimant was a party provided a full and fair opportunity to litigate the issue.

Claimant asserts relitigation of the claim petition is warranted because Employer failed to provide him the MSDS during the first litigation. In support, he cites General Woodcraft & Foundry v. Workmen's Comp. Appeal Bd., 318 A.2d 385 (Pa. Cmwlth. 1974). General Woodcraft & Foundry addressed the applicability of Section 426 of Workmen's Compensation Act. Finding Board discretion to order a reargument, this Court stated, "Certainly it would be appropriate to grant a rehearing where additional evidence can be produced or where a party had not been given an opportunity to present his case." General Woodcraft & Foundry, 318 A.2d at 387.

General Woodcraft & Foundry is inapposite. It addressed situations in which a rehearing is appropriate pursuant to Section 426. Claimant did not and, due to the passage of time, could not petition for a rehearing under that section; rather, he filed a new claim petition four years after his original petition was denied. Further, "[t]he purpose of granting rehearing in workmen's compensation cases is to allow a party to present newly-discovered, noncumulative evidence, and will not be granted to permit the party to strengthen weak proofs already presented." Paxos v. Workmen's Comp. Appeal Bd. (Frankford-Quaker Grocery), 631 A.2d 826, 831 (Pa. Cmwlth. 1993)(emphasis added).

Denial of the original claim petition was premised on the rejection of Claimant's equivocal expert testimony and Claimant's conduct after exposure. Any error stemming from Employer's alleged failure to provide the MSDS was harmless. That document offers information regarding the nature of the chemical to which claimant was exposed. The document does not render Claimant's expert less equivocal and does not offer new information on Claimant's conduct after exposure.

As he was provided a full and fair opportunity to

litigate causation, Claimant's second petition was barred by res judicata and collateral estoppel. Accordingly, the Board's order is **affirmed**.

/s/ Robert Simpson, Judge

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

Steven Smith,
Petitioner

v. **No. 243 WAL 2004**

Worker's Compensation
Appeal Board (Consolidated Freightways),
Respondent

ORDER

PER CURIAM

AND NOW, this 23rd day of March, 2005, the Petition for Allowance of Appeal is hereby Denied.

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

Steven Smith,
Petitioner

v. **No. 243 WAL 2004**

Worker's Compensation
Appeal Board (Consolidated Freightways),
Respondent

ORDER

PER CURIAM

AND NOW, this 19th day of April, 2005, the Application for Reconsideration is hereby denied.

STATUTORY PROVISIONS

Hazard Communication, 29 C.F.R. 1910.1200:

1910.1200(b)(4)(ii)

Employers shall maintain copies of any material safety data sheets that are received with incoming shipments of the sealed containers of hazardous chemicals, shall obtain a material safety data sheet as soon as possible for sealed containers of hazardous chemicals received without a material safety data sheet if an employee requests the material safety data sheet, and shall ensure that the material safety data sheets are readily accessible during each work shift to employees when they are in their work area(s); and,

1910.1200(f) "Labels and other forms of warning."

(1) The chemical manufacturer, importer, or distributor shall ensure that each container of hazardous chemicals leaving the workplace is labeled, tagged or marked with the following information:

(i)Identity of the hazardous chemical(s);

(ii) Appropriate hazard warnings; and

(iii) Name and address of the chemical manufacturer, importer, or other responsible party.

[...](3) Chemical manufacturers, importers, or distributors shall ensure that each container of hazardous chemicals leaving the workplace is labeled, tagged, or marked in accordance with this section in a manner which does not conflict with the requirements of the Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq.) and regulations issued under that Act by the Department of Transportation.

1910.1200(g) "Material safety data sheets."

(1) Chemical manufacturers and importers shall obtain or develop a material safety data sheet for each hazardous chemical they produce or import. Employers shall have a material safety data sheet in

the workplace for each hazardous chemical which they use.

49 C.F.R. 171.1, Applicability of Hazardous Materials Regulations (HMR) to persons and functions.

Sec. 171.1 Purpose and scope.

This subchapter prescribes the requirements of the Department of Transportation governing:

(a) The transportation of hazardous materials in commerce by, and their offering to: [. . . .]

(2) Interstate and foreign carriers by motor vehicle; and

(3) Intrastate carriers by motor vehicle so far as this subchapter relates to:

(i) Hazardous waste.

(ii) Hazardous substances.

[. . ..]

(c) Any person who, under contract with any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government, transports, or causes to be transported or shipped, a hazardous material or manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked, certified, or sold by such person as qualified for use in the transportation of hazardous materials shall be subject to and comply with all provisions of the Federal hazardous material transportation law, all orders and regulations issued thereunder, and all other substantive and procedural requirements of Federal, State, and local governments and Indian tribes (except any such requirements that have been preempted by the Federal hazardous material transportation law or any other Federal law), in the same manner and to the same extent as any person engaged in such activities that are in or affect commerce is subject to such provisions, orders, regulations, and requirements.

(d) The use of terms and symbols prescribed in this subchapter for the marking, labeling, placarding and description of hazardous materials and packagings used in

their transport.

[Amdt. 171-53, 45 FR 34586, May 22, 1980, as amended by Amdt. 171-74, 48 FR 27690, June 16, 1983; Amdt. 171-78, 49 FR 10510, Mar. 20, 1984; Amdt. 171-12, 56 FR 8624, Feb. 28, 1991; Amdt. 171-116, 57 FR 52934, Nov. 5, 1992; Amdt. 171-119, 58 FR 6870, Feb. 2, 1993; Amdt. 171-2, 59 FR 49132, Sept. 26, 1994; Amdt. 171-141, 61 FR 21101, May 9, 1996]

Sec. 171.2: General requirements.

(a) No person may offer or accept a hazardous material for transportation in commerce unless that person is registered in conformance with subpart G of part 107 of this chapter, if applicable, and the hazardous material is properly classed, described, packaged, marked, labeled, and in condition for shipment as required or authorized by applicable requirements of this subchapter, or an exemption, approval or registration issued under this subchapter or subchapter A of this chapter.

(b) No person may transport a hazardous material in commerce unless that person is registered in conformance with subpart G of part 107 of this chapter, if applicable, and the hazardous material is handled and transported in accordance with applicable requirements of this subchapter, or an exemption, approval or registration issued under this subchapter or subchapter A of this chapter.

[. . . .]

(e) When a person performs a function covered by or having an effect on a specification prescribed in part 178, 179 or 180 of this subchapter, an approval issued under this subchapter, or an exemption issued under subpart B of this chapter, that person must perform the function in accordance with that specification, approval, or exemption, as appropriate.

(f) No person shall, by marking or otherwise, represent that--

(1) A container or package for the transportation of hazardous materials is safe, certified, or in compliance with the requirements of this title unless it meets the requirements of all applicable regulations issued under the Federal hazardous material transportation law . . .

[Amdt. 171-70, 48 FR 2655, Jan. 20, 1983, as amended by Amdt. No. 171-100, 54 FR 25004, June 12, 1989; Amdt. 171-12, 56 FR 8624, Feb. 28, 1991; Amdt. No. 171-115, 57 FR 30631, July 9, 1992; 57 FR 37902, Aug. 21, 1992; Amdt. No. 171-120, 58 FR 33305, June 16, 1993; Amdt. 171-2, 59 FR 49132, Sept. 26, 1994; Amdt. 171-141, 61 FR 21101, May 9, 1996]

*****

Sec. 171.16 Detailed hazardous materials incident reports.

(a) Each carrier who transports hazardous materials shall report in writing, in duplicate, on DOT Form F 5800.1 (Rev. 6/89) to the Department within 30 days of the date of discovery, each incident that occurs during the course of transportation (including loading, unloading, and temporary storage) in which any of the circumstances set forth in Sec. 171.15(a) occurs or there has been an unintentional release of hazardous materials from a package (including a tank) or any quantity of hazardous waste has been discharged during transportation. If a report pertains to a hazardous waste discharge:

(1) A copy of the hazardous waste manifest for the waste must be attached to the report; and

(2) An estimate of the quantity of the waste removed from the scene, the name and address of the facility to which it was taken, and the manner of disposition of any removed waste must be entered in Section IX of the report form (Form F 5800.1) (Rev. 6/89).

(b) Each carrier making a report under this section shall

send the report to the Information Systems Manager, DHM-63, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590-0001; and, for incidents involving transportation by aircraft, a copy of the report shall also be sent to the FAA Civil Aviation Security Office nearest the location of the incident. A copy of the report shall be retained for a period of two years, at the carrier's principal place of business, or at other places as authorized and approved in writing by an agency of the Department of Transportation.

(c) Except as provided in paragraph (d) of this section, the requirements of paragraph (a) of this section do not apply to incidents involving the unintentional release of a hazardous material--

(1) Transported under one of the following proper shipping names:

(i) Consumer commodity.

(ii) Battery, electric storage, wet, filled with acid or alkali.

(iii) Paint and paint related material when shipped in a packaging of five gallons or less.

(3) Prepared and transported as a limited quantity shipment in accordance with this subchapter.

(d) The exceptions to incident reporting provided in paragraph (c) of this section do not apply to:

(1) Incidents required to be reported under Sec. 171.15(a);

(2) Incidents involving transportation aboard aircraft;

(3) Except for consumer commodities, materials in Packing Group I; or

(4) Incidents involving the transportation of hazardous waste.

Note: A guideline document for assisting in the completion of DOT Form F 5800.1 (Rev. 6/89) may be obtained from the Office of Hazardous Materials Transportation, DHM-51, U.S. Department of Transportation, Washington, DC 20590-0001.

[Amdt. 171-7, 35 FR 16837, Oct. 3, 1970, as amended by

Amdt. 171-56, 45 FR 73683, Nov. 6, 1980; Amdt. No. 171-65, 47 FR 24584, June 7, 1982; Amdt. 171-72, 48 FR 17095, Apr. 21, 1983; Amdt. 171-101, 54 FR 25813, June 19, 1989; Amdt. 171-109, 55 FR 39978, Oct. 1, 1990; Amdt. 171-140, 61 FR 18932, Apr. 29, 1996; Amdt. 171-145, 61 FR 27172, May 30, 1996]Sec. 171.17 [Reserved]

Sec. 171.21 Assistance in investigations and special studies.

(a) A carrier who is responsible for reporting an incident under the provisions of Sec. 171.16 shall make all records and information pertaining to the incident available to an authorized representative or special agent of the Department of Transportation upon request. The carrier shall give an authorized representative or special agent of the Department of Transportation reasonable assistance in the investigation of the incident.

(b) If the Department of Transportation makes an inquiry to a carrier of hazardous materials in connection with a study of incidents, the carrier shall--

(1) Respond to the inquiry within 30 days after its receipt or within such other time as the inquiry may specify; and

(2) Provide full, true, and correct answers to any questions included in the inquiry.

Pennsylvania Workers' Compensation Act Sections 414-419, 423, 435. 77 P.S. ____ (Bisel 2005).

77 P.S. Sec. 775 (Bisel 2005).

Whenever a claim petition or other petition is presented to the department, the department shall, by general rules or

special order, assign it to a referee for hearing. The department shall serve upon each adverse party a copy of the petition, together with a notice that such petition will be heard by the referee to whom it has been assigned (giving his name and address) as the case may be, and shall mail the original petition to such referee, together with copies of the notices served upon the adverse parties.

77 P.S. Sec. 851 (Bisel 2005).

At any time before an award or disallowance of compensation or order has been made by a referee to whom a petition has been assigned, the department may order such petition heard before any other referee. Unless the department shall otherwise order, the testimony taken before the original referee shall be considered as though taken before the substituted referee.

77 P.S. Sec. 821 (Bisel 2005).

Within twenty days after a copy of any claim petition or other petition has been served upon an adverse party, he may file with the department or its workers' compensation judge an answer in the form prescribed by the department. Every fact alleged in a claim petition not specifically denied by an answer so filed by any adverse party shall be deemed to be admitted by him. But the failure of any party or of all of them to deny a fact alleged in any other petition shall not preclude the workers' compensation judge before whom the petition is heard from requiring, of his own motion, proof of such fact. If a party fails to file an answer and/or fails to appear in person or by counsel at the hearing without adequate excuse, the workers' compensation judge hearing the petition shall decide the matter on the basis of the petition and evidence presented.

77 P.S. Sec. 802 (Bisel 2005).

Within fifteen days after notice that a petition has been directed to be heard by a referee has been served upon the adverse parties thereof, the referee shall fix a time and place for hearing the petition. The referee shall as soon as practicable within the limitations prescribed herein fix a time and a place for hearing the petition and serve upon all parties in interest a notice of the time and place of hearing, and shall serve upon the petitioner a copy of any answer of any adverse party. The hearing on any such petition shall be held within thirty-five days of the filing of the petition.

77 P.S. Sec. 833 (Bisel 2005).

The referee to whom a petition is assigned for hearing, may subpoena witnesses, order the production of books and other writings, and hear evidence, shall make a record of hearings, and shall make, in writing and as soon as may be after the conclusion of the hearing, such findings of fact, conclusions of law, and award or disallowance of compensation or other order, as the petition and answers and the evidence produced before him and the provisions of this act shall, in his judgment, require. The findings of fact made by a referee to whom a petition has been assigned or any question of fact has been referred under the provisions of section four hundred and nineteen shall be final, unless an appeal is taken as provided in this act.

77 P.S. Sec. 852 (Bisel 2005).

The board may remand any case involving any question of fact arising under any appeal to a referee to hear evidence and report to the board the testimony taken before him or such testimony and findings of fact thereon as the board may order. The department may refer any question of fact arising out of any petition assigned to a referee, to any other referee to hear evidence, and report the testimony so taken thereon to

the original referee.

77 P.S. Sec. 834-836 (Bisel 2005).

(a) Neither the board nor any of its members nor any workers' compensation judge shall be bound by the common law or statutory rules of evidence in conducting any hearing or investigation, but all findings of fact shall be based upon sufficient competent evidence to justify same. All parties to an adjudicatory proceeding are entitled to a reasoned decision containing findings of fact and conclusions of law based upon the evidence as a whole which clearly and concisely states and explains the rationale for the decisions so that all can determine why and how a particular result was reached. The workers' compensation judge shall specify the evidence upon which the workers' compensation judge relies and state the reasons for accepting it in conformity with this section. When faced with conflicting evidence, the workers' compensation judge must adequately explain the reasons for rejecting or discrediting competent evidence. Uncontroverted evidence may not be rejected for no reason or for an irrational reason; the workers' compensation judge must identify that evidence and explain adequately the reasons for its rejection. The adjudication shall provide the basis for meaningful appellate review.
(b) If any party or witness resides outside of the Commonwealth, or through illness or other cause is unable to testify before the board or a workers' compensation judge, his or her testimony or deposition may be taken, within or without this Commonwealth, in such manner and in such form as the department may, by special order or general rule, prescribe. The records kept by a hospital of the medical or surgical treatment given to an employe in such hospital shall be admissible as evidence of the medical and surgical matters stated therein.
(c) Where any claim for compensation at issue before a workers' compensation judge involves fifty-two weeks or less of disability, either the employe or the employer may

submit a certificate by any health care provider as to the history, examination, treatment, diagnosis, cause of the condition and extent of disability, if any, sworn reports by other witnesses as to any other facts and such statements shall be admissible as evidence of medical and surgical or other matters therein stated and findings of fact may be based upon such certificates or such reports. Where any claim for compensation at issue before a workers' compensation judge exceeds fifty-two weeks of disability, a medical report shall be admissible as evidence unless the party that the report is offered against objects to its admission.
(d) Where an employer shall have furnished surgical and medical services or hospitalization in accordance with the provisions of section 306(f.1), or where the employe has himself procured them, the employer or employe shall, upon request, in any pending proceeding, be furnished with, or have made available, a true and complete record of the medical and surgical services and hospital treatment, including X rays, laboratory tests, and all other medical and surgical data in the possession or under the control of the party requested to furnish or make available such data.
(e) The department may adopt rules and regulations governing the conduct of all hearings held pursuant to any provisions of this act, and hearings shall be conducted in accordance therewith, and in such manner as best to ascertain the substantial rights of the parties.

77 P.S. Sec. 853 (Bisel 2005).

(a) Any party in interest may, within twenty days after notice of a workers' compensation judge adjudication shall have been served upon him, take an appeal to the board on the ground: (1) that the adjudication is not in conformity with the terms of this act, or that the workers' compensation judge committed any other error of law; (2) that the findings of fact and adjudication was unwarranted by sufficient, competent evidence or was procured by fraud, coercion, or other improper conduct of any party in interest. The board may,

upon cause shown, extend the time provided in this article for taking such appeal or for the filing of an answer or other pleading.

77 P.S. Sec. 991 (Bisel 2005).

(a) The department shall establish and promulgate rules and regulations consistent with this act, which are reasonably calculated to:
(i) expedite the reporting and processing injury cases,
(ii) insure full payment of compensation when due,
(iii) expedite the hearing and determination of claims for compensation and petitions filed with the department under this act,
(iv) provide the disabled employe or his dependents with timely notice and information of his or their rights under this act,
(v) explain and enforce the provisions of this act.

(b) If it appears that there has not been compliance with this act or rules and regulations promulgated thereunder the department may, on its own motion give notice to any persons involved in such apparent noncompliance and schedule a hearing for the purpose of determining whether there has been compliance. The notice of hearing shall contain a statement of the matter to be considered.

(c) The board shall establish rules of procedure, consistent with this act, which are reasonably calculated to expedite the hearing and determination of appeals to the board and to insure full payment of compensation when due.

(d) The department, the board, or any court which may hear any proceedings brought under this act shall have the power to impose penalties as provided herein for violations of the provisions of this act or such rules and regulations or rules of procedure:

(i) Employers and insurers may be penalized a sum

not exceeding ten per centum of the amount awarded and interest accrued and payable: Provided, however, That such penalty may be increased to fifty per centum in cases of unreasonable or excessive delays. Such penalty shall be payable to the same persons to whom the compensation is payable.

(ii) Any penalty or interest provided for anywhere in this act shall not be considered as compensation for the purposes of any limitation on the total amount of compensation payable which is set forth in this act.

(iii) Claimants shall forfeit any interest that would normally be payable to them with respect to any period of unexcused delay which they have caused.

(e) The department shall furnish to persons adversely affected by occupational disease appropriate counseling services, vocational rehabilitation services, and other supportive services designed to promote employability to the extent that such services are available and practical.

75 Pa. Cons. Stat. Ann. Section 8301-8308:

§ 8301. Legislative findings.

(a) Essential nature.--It is hereby found as a fact that hazardous materials are essential for various industrial, commercial and other purposes, that their transportation is a necessary incident of their use and, therefore, that such transportation is required for the employment and economic prosperity of the people. It is also found as a fact that the transportation of hazardous materials may involve risk of injury to persons and damage to property and that the degree of the risk can and should be kept at a minimum consistent

with technical feasibility and economic reasonableness.
(b) Balance of interests.--The purpose of this chapter and the primary standard by which it shall be administered is to so regulate the transportation of hazardous materials and assure compliance with the regulations promulgated pursuant to this chapter that there is established and maintained a reasonable balance between the interests of the people in the safety of themselves and their property, on the one hand, and the interests of the people and their employment and economic prosperity on the other.

§ 8302. Powers and duties of department.

The department shall have the following powers and duties:

1. Administer the hazardous materials transportation program pursuant to this chapter.
2. Classify hazardous materials according to the nature and degree of risk involved in their transportation and apply separate regulations to each class.
3. Adopt regulations pertaining to methods of packing, loading and unloading hazardous materials; to the specifications, marking, inspection, condition and equipment of vehicles transporting such substances; to qualification of drivers and other matters relating to operation of such vehicles; to routing and parking of such vehicles, except that such regulations may not supersede ordinances of local authorities and all other factors which affect the nature or degree of risk involved in transportation of hazardous materials.
4. Declare any material to be a hazardous material and thereby subject its transportation to this chapter.
5. Issue permits and specify the terms and conditions thereof, exempting cargo tanks used solely for intrastate transportation and trucks used solely for the transportation of combustible liquids from Federal design specifications. The permits shall be issued upon meeting testing requirements established by department regulation and shall be valid for a period

of two years.

6. Inspect vehicles and investigate all other matters relating to the safe transportation of hazardous materials on any highway in this Commonwealth including the Pennsylvania Turnpike.
7. Delegate enforcement of all or parts of these regulations to one or more of the several departments and commissions represented on the Hazardous Materials Transportation Advisory Committee who meet training criteria specified by department regulation. Delegation shall be accomplished through cooperative agreements and become effective upon publication in the Pennsylvania Bulletin.
8. Enter into cooperative agreements with the Federal Government relating to the regulation of the highway transportation of hazardous materials.

§ 8303. Correspondence with Federal regulations.

In the case of any person who is subject to Federal regulations pertaining to the transportation of hazardous materials, the department's regulations shall, and in any other case may, as far as practicable, correspond with such Federal regulations. It is the purpose of this section to avoid, as far as practicable, the imposition of conflicting regulations upon persons who operate vehicles subject to Federal regulations, pertaining to the transportation of hazardous materials. It is also the purpose of this section to empower, but not require, the department to prescribe, for persons not subject to the Federal regulations, regulations identical with or similar to those Federal regulations pertaining to the transportation of hazardous materials.

§ 8304. Right of entry.

Every motor carrier shall allow any department field investigator, member of the Pennsylvania State Police or other person delegated enforcement authority in accordance

with section 8302(7) (relating to powers and duties of department) to enter upon and inspect the business premises of the motor carrier, including vehicles and other equipment located thereon, at all reasonable times for the purpose of determining whether the motor carrier is in compliance with this chapter and pertinent regulations, and shall make available to such person for inspection and copying all accounts, books, records, memoranda, correspondence and other documents which may reasonably relate to such determination.

§ 8305. Injunctions and other remedies.

(a) Restraining orders.--The Attorney General, upon request of the department or upon his own motion, may proceed in the name of the Commonwealth, by injunction, mandamus, quo warranto or other appropriate remedy at law or in equity, criminal or civil, to restrain violations of the department's hazardous materials regulations or orders or to enforce obedience thereto.

(b) Long arm provision.--Whenever the Attorney General shall have reason to believe that a person has violated any regulation or order of the department but is outside the jurisdiction of this Commonwealth, the Attorney General may petition the court for an order authorizing the seizure and confiscation of such person's vehicles or hazardous materials wherever and whenever they may be found in this Commonwealth.

§ 8306. Penalties.

(a) Offenses defined.--Any person who violates any provision of this chapter, any rule or regulation of the department, any order of the department or any condition of any permit issued pursuant to this chapter commits a summary offense and, upon conviction, the person shall be subject to a fine of not less than $50 nor more than $1,000 for each separate offense, and, in default of the payment of the

fine, shall be imprisoned for a period of 90 days.
(b) Willful violations.--Any person who willfully violates any provision of this chapter, any rule or regulation of the department, any order of the department or any condition of any permit issued pursuant to this chapter commits a misdemeanor of the third degree and, upon conviction, shall be subject to a fine of not less than $1,000 nor more than $25,000 for each separate offense or to imprisonment in the county jail for a period of not more than one year, or both.
(c) Subsequent willful violations.--Any person who, after a conviction of a misdemeanor for any violation within two years as provided in this section, willfully violates any provision of this chapter, any rule or regulation of the department, any order of the department or any condition of any permit issued pursuant to this chapter commits a misdemeanor of the second degree and, upon conviction, shall be subject to a fine of not less than $2,500 nor more than $50,000 for each separate offense or to imprisonment for a period of not more than two years, or both.
(d) Continuing violations.--Each day of continued violation of any provision of this chapter, any rule or regulation of the department, any condition of any permit or order of the department issued pursuant to this chapter shall constitute a separate offense.
(e) Jurisdiction.--All summary proceedings under the provisions of this chapter may be brought before any district justice of the county where the offense occurred or in the county where the public is affected, and to that end jurisdiction is hereby conferred upon the district justices, subject to appeal by either party in the manner provided by law for appeals from summary convictions. It shall be the duty of the district attorney of the county to represent the interests of the Commonwealth.
(f) Shipping documents.--A properly prepared shipping document shall be prima facie evidence of the contents of a vehicle carrying hazardous materials.

§ 8307. Hazardous Materials Transportation Advisory

Committee.

(a) Membership.--There shall be a Hazardous Materials Transportation Advisory Committee appointed by the secretary. The committee shall be composed of an authorized representative from the Department of Transportation, who shall chair the committee, the Office of Attorney General, the Department of Health, the Department of Environmental Resources, the Pennsylvania State Police, the Pennsylvania Emergency Management Agency and the Pennsylvania Public Utility Commission and representatives of the hazardous materials industry and the public as follows:

1. A manufacturer or shipper.
2. A consignee or user.
3. A common carrier.
4. A private carrier.
5. A representative of the fire services.
6. A representative of the emergency medical services.
7. A representative with highway safety experience.
8. A member from the general public.
9. Others deemed appropriate by the secretary.

(b) Duties.--The committee may review all regulations and advise the department on all matters concerning the highway transportation of hazardous materials.

§ 8308. Report to the General Assembly.

Within one year of the effective date of this chapter, the secretary shall cause to be filed in the offices of the Secretary of the Senate and the Chief Clerk of the House of Representatives a report explaining the department's efforts to:

1. Appoint all members of the Hazardous Materials Transportation Advisory Committee representing private interests and the public.
2. Conduct terminal inspections and road checks in a uniform manner across this Commonwealth.
3. Utilize Federal funds to the fullest extent practicable.

4. Coordinate inspections with the United States Office of Motor Carrier Safety.